IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 290 OF 2002

Smt. Nandeni Ramesh Tawde & Anr.... Petitioners

V/s.

State of Maharashtra & Anr. ... Respondents

Mr. N.M. Ganguli for the petitioner.
Ms. S.M. Dandekar, AGP for respondent No. 1.
Mr. P.M. Jadhav with Mr. V.P. Sawant & Mr. N.R. Patankar for respondent No. 2.

CORAM : F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED : 4th October, 2006

P.C.

. The petitioners have invoked the extra-ordinary jurisdiction of this Court. The petitioners are the widows of the employees of erstwhile Haffkine Institute of the Government of Maharashtra. The petitioners seek to challenge the action of respondents of non-granting of pension and/or discontinuance of the pension and/or recovery of pension to them on the foundation that the sanction of family pension was inadmissible of the period from 21st April, 1999 to 30th September, 2001 amounting to Rs. 1,06,082/- and thereby respondent Government has issued order to recover the said amount.

2. By an order dated 2nd September, 2002 this Court has admitted present Writ Petition and stayed the recovery of the pension amount already paid to the petitioners and tagged the present Writ Petition along with Writ Petition Nos. 514, 515 & 516 of 2001. The respondent Government has filed its affidavit dated 28th July, 2002. The petitioners have filed a rejoinder dated 27th August, 2002 and reiterated their initial submissions.

3. The respective husbands of the petitioners' were the widows of employees of erstwhile Haffkine Institute of Government of Maharashtra. They joined services under the Government of Maharashtra from 15.11.1967.

4. By notification dated 26th November, 1973, the Government has converted the Haffkine Institute, Bombay into two autonomous bodies, namely Haffkine Institute for Training, Research and Testing and Haffkine Bio Pharmaceuticals Corporation Limited. The effective date was declared as 1st September, 1975. Relative clause (4) of Resolution dated 30th April, 1975 is as under:-

> "(4) On discharge from the Government service the Government servants concerned should be provided with effect from the said date, with an appointment to the corresponding and equivalent posts in the new Institute or Corporation, as the case may be in the same scale and allowance at present admissible to them. On such appointment their terms and conditions of service under the New Institute or Corporation should not be less favourable than their existing terms and conditions of service and in particular, their terms and conditions pertaining to their existing scales of pay and allowances, pensionary benefits, provident fund, leave, medical benefits, facility to continue in Government accommodation and other benefits shall be protected as specified in Appendix "A" to this G.R. However, such a protection shall not extent to matters pertaining to their future promotions, which will be governed by the rules and regulations made by their new employers. The service rendered by them under Government will count for their pensionary and all other benefits as if it was a service rendered under the new body."

5. Those Government servants were discharged accordingly. The respondent Government had sought option from all the members of the staff on the establishment of existing institute regarding their appointment under new institute or corporation on or before 31st July, 1975. As reproduced above clause (4) of the notification dated 30th April, 1975, the terms and conditions for appointment of the staff of the Haffkine Institute was referred as part and parcel of the said circular. The relevant clause (5) of the

said Appendix "A" to the circular dated 30th April, 1975 is reproduced as under:-

> "(v) The pensionary liability in respect of the service rendered under the Government by a permanent employee, who is eligible for pension, will be of Government and the said pension will be payable when the said employee finally retires from Haffkine Institute for Training, Research and Testing/Haffkine Bio-Pharmaceutical Corporation Ltd., on attaining the age of 50 years (if he was holding a gazette post) and 55 years (if he was holding a non-gazetted post), as per Government Resolution, Finance Department No. PEN 1067/49/67, dated 17th October, 1967 and PEN 1072/596 dated 25th April, 1973 or on superannuation.

6. The respondent has averred and relied upon the resolution Nos. PEN 1067/49/67, dated 17th October, 1967 and PEN 1072/596 dated 25th April, 1973 as referred above, in following words:

> "I say that Government Resolution dated 30th April, 1975 is very clear as regards to the entitlement of the pensionery liability of the permanent employees. The said G.R. is annexed as Exhibit "A" to the petition, however, it is incomplete. I say that as per clause (V) of Annexure "A" to the said Government Resolution the permanent employees who were working in the Government Department and rendered more than 10 years of service till 31st August, 1975 are eligible for pension vide G.R. F.D. No. PEN 1067/49/67, dated 17th October, 1967 & PEN 1072/596 dated 25th April, 1973. I say that the above criteria for the eligibility of pension is also mentioned in Maharashtra Civil

> Services Rules, 1982 (67) (b) which says that Government employee is eligible for the benefit of pension on completion of minimum 10 years of services. I say that in the year 1975 instead of MCSR Rules BCSR Rules and Government Resolutions were applicable but the criteria was same.

7. The relevant clause of Government Circular dated 17th October, 1967 reads as follows:

> "In cases where a government servant at the time of absorption has less than 10 years service and is not entitled to pension, the question of proportionate pension will not arise, he will only be eligible to proportionate service gratuity in lieu of pension and to death-cum-retirement gratuity based on length of service."

8. The respondents have further relied on circular/Government Resolution dated 28th April, 1981, which contains the policy decision taken by the Finance Department regarding various pension schemes and the available criteria for the employees who have been permanently absorbed in public sector undertaking after abolition of the posts. The respondents

submitted and stated that as per said resolution Clause VII (2), it was made very clear by the Finance Department that benefits of the pension will not be admissible to the families of those who absorbed before rendering 10 years qualifying service.

9. In this undisputed position of facts and the Government Resolution and policy on record, in no way petitioners can claim continuation of the family pension as claimed in the present petition. The husbands of the petitioners who were employees of Haffkine Institute have admittedly not completed 10 years of service on 1st September, 1975. As per the Government Resolution dated 30th April, 1975, the effective date of bifurcation was 01.09.1975. As noted, the Appendix "A" to the said circular dated 30th April, 1975 refers to the Notification dated 17th October, 1967 and 25th April, 1979. Since the said notification itself provides that in cases where a Government servant at the time of absorption has less than 10 years of service, is not entitled to pension, the question of proportionate pension will not arise. He will only be eligible to proportionate service gratuity in lieu of pension and to death-cum-retirement benefits based on length of

service. The petitioners' husbands were appointed on 15.11.1967 and 01.06.1967. They admittedly had not completed 10 years of service prior to 01.09.1975.

10. The respondents in the present case, however, initiated recovery proceedings as they were dis-entitled to claim pension. The recovery proceeding therefore from the date of 21.04.1989 to 30.09.2001 & 07.09.1990 to 30.09.2001 by letter dated 08.05.2002/14.05.2002, as claimed, in no way can be said to be illegal and/or wrong in law. The recovery cannot be said to be arbitrary or illegal. The respondents' action based on the submissions made in the affidavit supported by the Government resolution and reproduced above cannot be said to be based on extraneous consideration and/or mis-use of powers.

11. We find, in the facts and circumstances of the case, the impugned action is within the frame-work of law and needs no interference.

12. The petition is disposed of accordingly. Rule discharged. The interim reliefs as granted stands vacated. No order as to costs.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]